

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 13 2004

OFFICE OF
MANAGING DIRECTOR

Martin L. Stern
Holly Rachel Smith
Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, N.W., Suite 500
Washington, DC 20006

Re: Request for Waiver of FY 2003 Regulatory
Fees on behalf of PC Landing Corp.
Fee Control No. 00000RROG-04-018

Dear Counsel:

This letter responds to your request dated September 24, 2003 for deferral and waiver of the regulatory fees for Fiscal Year (FY) 2003 filed on behalf of PC Landing Corp., debtor-in-possession (PC Landing), cable landing licensee for the Pacific Crossing (PC-1) submarine cable system, on grounds of financial hardship. The total amount of fees at issue is \$319,353.53.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). Evidence of bankruptcy or receivership is sufficient to establish financial hardship. See Implementation of Section 9 of the Communications Act, 10 FCC Rcd 12759, 12761-62 (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership).

In support of your request you state that in July 2002, PC Landing sought protection under Chapter 11 of the Bankruptcy Code and, with its affiliates, is engaged in a sale process that is expected to culminate in sale of the PC-1 system. You also state that the Commission previously granted a waiver of PC Landing's FY 2002 fees based upon the bankruptcy filing,¹ and that PC Landing's financial status as debtor-in-possession remains unchanged since the FY 2002 fees waiver request. Accordingly, your request for deferral and waiver of the FY 2003 fees is granted.

¹ Letter from Martin L. Stern and Holly Rachel Smith, Preston Gates Ellis & Rouvelas Meeds LLP, to Andrew S. Fishel, Federal Communications Commission (Sep. 24, 2003) (citing Letter from Mark A. Reger, Federal Communications Commission, to Martin L. Stern and Edward Krachmer, Preston Gates Ellis & Rouvelas Meeds LLP (Aug. 27, 2003)).

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and a stylized "R".

Mark A. Reger
Chief Financial Officer

September 24, 2003

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SEP 24 2003

Federal Communication Commission
Bureau / Office

VIA HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554

Re: *PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of its
FY Regulatory Fees*

Dear Mr. Fishel:

In accordance with Section 1.1116 of the Commission's Rules,¹ PC Landing Corp., debtor-in-possession ("PC Landing Corp."), by its undersigned counsel, respectfully requests waiver of its FY 2003 regulatory fee obligations, which if not waived would total \$319,353.53. Pursuant to Section 1.1116(c) of the Commission's Rules,² PC Landing Corp. also requests deferral of its FY 2003 Regulatory Fees while the waiver request is pending.

Under the Commission's rules, regulatory fees may be waived upon a showing of financial hardship.³ The Commission stated in its Report and Order on the Assessment and Collection of Annual Regulatory Fees for Fiscal Year 2003, "that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver."⁴ As demonstrated below, PC Landing Corp. meets this criterion, and its regulatory fees should therefore be waived for Fiscal Year 2003.

PC Landing Corp. is the cable landing licensee for the Pacific Crossing ("PC-1") submarine cable system. In July 2002, PC Landing Corp. sought protection under Chapter 11 of the Bankruptcy Code, and, together with its affiliates, is engaged in a sale process that is expected to culminate in the sale of the PC-1 system.⁵ On August 27, 2003, the Commission granted PC

¹ 47 CFR § 1.1116.

² 47 CFR § 1.1116(c).

³ See Assessment and Collection of Annual Regulatory Fees for Fiscal Year 2003, Report and Order, MD Docket No. 03-83 (FCC 03-184, rel. July 25, 2003) at ¶ 13.

⁴ *Id.*

⁵ PC Landing Corp. and Pivotal Telecom, LLC, ("Pivotal Telecom") the proposed buyer of the PC-1 system, have filed a joint application with the Commission for the transfer of the PC-1 cable-landing license from PC Landing

Landing Corp.'s request for a deferral and waiver of its FY 2001 and 2002 regulatory fees, together with all applicable late charges.⁶ The Commission's Chief Financial Officer stated that "based upon the July 19, 2002 bankruptcy filings associated with PC Landing Corp., your request for waiver of the FY 2002 regulatory fee and associated late charge penalty is granted."⁷ PC Landing Corp.'s financial status, as a debtor-in-possession, remains unchanged since the FY 2002 waiver request. Thus, this fee waiver request is made for good cause shown and should be granted.

For your convenience, a copy of PC Landing Corp.'s FY 2001 and 2002 waiver request and supporting documentation is attached hereto. Should you have any questions concerning this request, or require additional information, please do not hesitate to contact the undersigned.

Respectfully Submitted,

PC LANDING CORP.
(DEBTOR-IN-POSSESSION)

By: 

Martin L. Stern

Holly Rachel Smith

Preston Gates Ellis & Rouvelas Meeds LLP

1735 New York Avenue, N.W., Suite 500

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(202) 628-1700 (Tel)

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Attorneys for PC Landing Corp
(Debtor-in-Possession)

Corp. to Pivotal Telecom. See *Application of PC Landing Corp. (Debtor-in-Possession) for Approval of the Assignment of its Submarine Cable Landing License to Pivotal Telecom, LLC* (File No. SCL-ASG-20030819-00024, filed August 12, 2003).

⁶ August 27, 2003 Letter regarding PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of FY 2002 and FY 2001 Regulatory Fees, Fee Control No.: 00000RROG-03-083, from Mark A. Reger, Chief Financial Officer, Federal Communications Commission, to Martin L. Stern and Edward Krachmer.

⁷ *Id.*

CERTIFICATION OF PC LANDING CORP. (DEBTOR-IN-POSSESSION)

On behalf of PC Landing Corp., debtor-in-possession, I hereby certify that the statements in the foregoing Letter are true, complete, and correct to the best of my knowledge, information and belief, and are made in good faith. I further certify that PC Landing Corp., debtor-in-possession, is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

By: 

Name: 

Title: 

Dated: September 23, 2003

March 28, 2003

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MAR 28 2003

Federal Communication Commission
Bureau / Office

VIA HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554

Re: *PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of its FY 2001 and FY 2002 Regulatory Fees*

Dear Mr. Fishel:

In accordance with Section 1.1116 of the Commission's Rules,¹ PC Landing Corp., debtor-in-possession ("PC Landing Corp."), by its undersigned counsel, respectfully requests deferral and waiver of its FY 2001 and FY 2002 regulatory fee obligations.

PC Landing Corp. is the cable landing licensee for the Pacific Crossing ("PC-1") submarine cable system. As discussed more fully below, in July 2002, PC Landing Corp. sought protection under Chapter 11 of the Bankruptcy Code, and, together with its affiliates, is engaged in a sale process that is expected to culminate in a bankruptcy auction for the PC-1 system.

At the time it filed for Chapter 11 in July 2002, PC Landing Corp. had outstanding regulatory fees for FY 2001 in the amount of \$94,500.00. In addition, PC Landing Corp.'s regulatory fees for FY 2002, which were due on September 25, 2002, are \$152,627.33. To date, its FY 2001 and FY 2002 regulatory fees remain unpaid.

Given its financial position, as discussed below and as the Commission has found in the context of other licensee bankruptcies, this fee waiver request is made for good cause shown. For the same reason, good cause exists for deferral of PC Landing Corp.'s outstanding regulatory fees while the Commission considers the waiver request. Therefore, as required by Section 1.1116(c) of the Commission's Rules,² PC Landing Corp. also requests deferral of its FY 2001 and FY 2002 Regulatory Fees while the waiver request is pending.

¹ 47 CFR § 1.1116.

² 47 CFR § 1.1116(c).

Factual Background

PC Landing Corp., a wholly-owned subsidiary of Pacific Crossing Ltd., debtor-in-possession ("PCL"), holds the U.S. cable landing license for the Pacific Crossing cable system (PC-1). PC-1 is one of three major trans-Pacific fiber optic cable systems with available capacity linking Japan and the U.S. On July 19, 2002, PCL, PC Landing Corp., and certain other affiliates of Pacific Crossing Ltd. (collectively, the "PCL Debtors") commenced voluntary Chapter 11 cases in the U.S. Bankruptcy Court in Delaware. *In re PC Landing Corp., et al.*, Chap. 11 Case No. 02-12086 (PJW) (Bankr. D. Del.).

PC Landing Corp.'s financial situation is dire. PC-1 was constructed for approximately \$1.35 billion, the majority of which was financed through a credit agreement with its bank group. As of the petition date, PCL owed approximately \$716,000,000 under the credit agreement. At the time it filed for Chapter 11 protection, PC Landing Corp. was financially insolvent. Absent access to certain cash collateral that is subject to a lien from its bank group, PCL would have insufficient funds to continue its operations, and would have been required to shut down operations. Consequently, since August 2002, PCL has been operating pursuant to a series of Cash Collateral Stipulations with its bank group that has provided it with access to limited cash collateral necessary for the continued operation of PC-1. At the same time, the PCL Debtors have been involved in an ongoing process, commenced prior to the initiation of the Chapter 11 cases, to seek out restructuring or sale opportunities for PC-1 (the "Sale Process").

In connection with its Sale Process, the PCL Debtors have received indications of interest from several parties, and are working towards court approval of an asset purchase agreement with a potential buyer to be used as the "stalking horse" agreement in connection with a bankruptcy auction for PC-1. At present, the PCL Debtors continue negotiations with these parties and expect that an agreement with a single chosen "stalking horse" bidder will be reached over the next weeks or months that will result in the initiation of an auction of the PCL Debtors' assets.

As discussed above, PC Landing Corp. currently owes the Commission \$94,500.00 in FY 2001 regulatory fees and \$152,627.33 in FY 2002 regulatory fees. PC Landing Corp. believes that its Chapter 11 status and dire financial condition constitute good cause for grant of this Petition and that such a grant would be in the public interest.

Discussion

Pursuant to Section 9(d) of the Communications Act of 1934, as amended (the "Act"), the Commission may "waive, reduce or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."³ The Commission has stated that it

³ 47 U.S.C. § 159(c).

"will grant waivers of the fees on a sufficient showing of financial hardship."⁴ Most pertinently, the Commission has concluded that:

Evidence of bankruptcy or receivership is sufficient to establish financial hardship. Moreover, where a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee. Thus, we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership.⁵

PC Landing Corp. now faces precisely the circumstance described by the Commission. PC Landing Corp. has been undergoing Chapter 11 reorganization since July 19, 2002. Other creditors, such as the PCL Debtors' bank group, will only be recovering a fraction of their pre-petition claims, and PC Landing Corp. has no authority to pay pre-petition fees, such as the outstanding regulatory fees for FY 2001. Moreover, the PCL Debtors have been subject to strict Cash Collateral Stipulations since August 2002, providing them, pursuant to an extremely stringent budget, only limited access to cash for ongoing operations pending sale of the system. At the same time, the PCL Debtors presently have post-petition asserted administrative claims in excess of their available cash. Under these circumstances, payment of the FY 2002 regulatory fees of approximately \$153,000, which are outside the PCL Debtors' budget, potentially would affect the availability of cash for PC-1's ongoing operations. PC Landing Corp. submits, just as the Commission has found in analogous circumstances involving bankrupt licensees, that these circumstances support a finding of financial hardship justifying waiver of its regulatory fees.

The Commission has at least twice waived or deferred regulatory fees for bankrupt entities in the context of both pre-petition and post-petition past due regulatory fees, in each case applying the principles set forth in its general pronouncements. For example, in a 1998 case analogous to PC Landing Corp.'s FY 2001 past due regulatory fees, the Commission granted a petition by the trustee of bankrupt licensee Stratcom, Ltd. to defer pre-petition FY 1997 regulatory fees that were 11 months past due.⁶ Three years later, in *Astroline Communications Company, L.P.*,⁷ a case

⁴ *Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Memorandum Opinion and Order*, 10 FCC Rcd 12759, ¶13 (1995) ("FY 1994 Fee Reconsideration Order"). See also *Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5346 ¶35 (1994) ("If a petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due.")

⁵ *FY 1994 Fee Reconsideration Order*, 10 FCC Rcd at ¶14 (emphasis added).

⁶ *Fee Decisions of the Managing Director Available to the Public, Public Notice*, DA 98-2009, at 6 (rel. Oct. 9, 1998). Stratcom, Ltd. filed for bankruptcy on October 10, 1997. See *In re: Stratcom, Ltd.*, Case No. 97-36057 (Bankr. E.D. Cal.).

⁷ *Fee Decisions of the Managing Director Available to the Public, Public Notice*, DA 01-1342, at 1 (rel. June 4, 2001).

analogous to PC Landing Corp.'s past due FY 2002 regulatory fees, the Commission granted a waiver of past-due regulatory fees that were incurred post-petition. In that decision, the Commission waived two years' of unpaid post-petition regulatory fees, some of which were more than 18 months past-due. Like PC Landing Corp. here, the basis of those fee waiver decisions was the financial hardship of the licensees as evidenced by their respective bankruptcies.

Conclusion

Given PC Landing Corp.'s bankruptcy and the public interest benefits of its ongoing operation and ultimate sale to a financially sound potential buyer, good cause has been shown for granting waiver of PC Landing Corp.'s 2001 and 2002 regulatory fees, and grant of this waiver would be in the public interest.

Should you have any questions concerning this request, or require additional information, please do not hesitate to contact the undersigned.

Respectfully Submitted,

PC LANDING CORP.
(DEBTOR-IN-POSSESSION)

By: 

Martin L. Stern

Edward B. Krachmer

Preston Gates Ellis & Rouvelas Meeds LLP

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Attorneys for PC Landing Corp
(Debtor-in-Possession)

cc: Donald Abelson, Chief, International Bureau
James L. Ball, Chief, Policy Division
Breck Blalock, Deputy Chief, Policy Division
George Li, Deputy Chief Operations, Policy Division
Kathleen Collins, Policy Division

CERTIFICATION OF PC LANDING CORP. (DEBTOR-IN-POSSESSION)

On behalf of PC Landing Corp., debtor-in-possession, I hereby certify that the statements in the foregoing Letter are true, complete, and correct to the best of my knowledge, information and belief, and are made in good faith. I further certify that PC Landing Corp., debtor-in-possession, is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

By: 

Name: *M. Karsten*

Title: *Vice President*

Dated: March 26, 2003

June 18, 2003

VIA HAND DELIVERY

Joanne F. Wall, Esq.
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *PC Landing Corp., Debtor-in-Possession, Petition for Deferral and Waiver of its FY 2001 and FY 2002 Regulatory Fees (Filed March 28, 2003)*

Dear Ms. Wall:

By this letter, PC Landing Corp., debtor-in-possession ("PC Landing Corp.") responds to your e-mail to Edward B. Krachmer on May 19, 2003 requesting that PC Landing Corp. provide further information with regard to the above-referenced matter within 30 days.¹ In particular, at your request, this letter provides information regarding PC Landing Corp.'s financial status "reflective of fiscal year 2001" sufficient to evidence the financial hardship showing that a petitioner must demonstrate in requesting a regulatory fee waiver.

As discussed in PC Landing Corp.'s March 28, 2003 *Petition for Deferral and Waiver of its FY 2001 and FY 2002 Regulatory Fees ("Fee Waiver Petition")*, PC Landing Corp. is the wholly owned indirect operating subsidiary of Pacific Crossing Ltd. ("PCL"). To this extent, the information provided herein concerns PCL's overall finances.

PCL lost \$1.25 billion in calendar year 2001. At the time that the Federal Communications Commission ("FCC") FY 2001 regulatory fees were due, PCL was ten months from filing its petition for protection under Chapter 11 of the Bankruptcy Code.² As detailed in the calendar year-end financial statements for 2001 attached hereto,³ PCL was already facing a severe liquidity crunch. As of the end of 2001, PCL had \$92 million in current assets and \$156 million in current liabilities. At the time, PCL's sales forecast was bleak, with minimal projected revenues. In addition, PCL faced monthly interest expenses of approximately \$3.5 million, as well as an operational agreement with Global Crossing Ltd. ("Global Crossing") requiring monthly payments of approximately \$3.6 million. While at previous times, PCL might have been able to borrow funds from Asia Global Crossing Ltd. ("AGC"), its 84.5% indirect owner, or perhaps from Global

¹ A copy of your May 19, 2003 e-mail is Attachment A, hereto.

² See *In re PC Landing Corp., et al.*, Chap. 11 Case No. 02-12086 (PJW) (Bankr. D. Del., July 19, 2002).

³ Attachment B. The audit of PCL's FY 2001 finances was never completed as events relating to PCL's bankruptcy intervened.

Crossing, these options were not available in late 2001 as both companies faced their own liquidity crises and impending bankruptcy filings.⁴

The FCC order that you quote in your e-mail also makes reference to valid evidence of financial hardship including information concerning officer and employee compensation. Neither PCL nor any of its subsidiaries, however, had any employees of their own. Instead, PCL was operated through a management contract with AGC and a turnkey maintenance agreement with Global Crossing. Given these circumstances, PCL is unable to provide any information regarding officer and employee compensation.

Should you have any questions concerning this matter, or require additional information, please do not hesitate to contact the undersigned.

Respectfully Submitted,

**PC LANDING CORP.
(DEBTOR-IN-POSSESSION)**

By: 

Martin L. Stern

Edward B. Krachmer

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*Attorneys for PC Landing Corp
(Debtor-in-Possession)*

Attachments

cc: Andrew S. Fishel, Managing Director
James L. Ball, Chief, Policy Division
Breck Blalock, Deputy Chief, Policy Division
George Li, Deputy Chief Operations, Policy Division
Kathleen Collins, Policy Division

⁴ See *In re Global Crossing Ltd., et al.*, Chap. 11 Case No. 02-40188 (REG) (Bankr. S.D.N.Y., Jan. 28, 2002); *In re Asia Global Crossing Ltd., et al.*, Chap. 11 Case No. 02-15749 (SMB) (Bankr. S.D.N.Y., Nov. 17, 2002).

CERTIFICATION OF PC LANDING CORP., DEBTOR-IN-POSSESSION

On behalf of PC Landing Corp., debtor-in-possession. I hereby certify that the information contained in the foregoing Letter is true and correct to the best of my knowledge, information, and belief, and are made in good faith.

By: 

Name:

Brian Kushner

Title:

President CEO

Date: June 17 2003

Attachment A

Krachmer, Edward (DC)

From: Joanne Wall [Joanne.Wall@fcc.gov]
Sent: Monday, May 19, 2003 11:15 AM
To: EdwardK@prestongates.com
Subject: PC Landing documentation for FY 2001

Mr. Krachmer,

As just discussed, additional information is needed to support PC Landing's request for waiver of the fiscal year (FY) 2001 regulatory fees. The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon*, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-12762.

Again, as discussed, the supporting documentation should be reflective of fiscal year 2001. Please submit the appropriate documentation to support PC Landing's waiver request within 30 days of this correspondence. Please feel free to e-mail such documentation directly to me. Thank you very much.

Joanne Wall

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Attorney Work Product of
Joanne F. Wall

6/16/2003